

FUNDAMENTALS OF TRIAL ADVOCACY COURSE

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ADMITTING EVIDENCE

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First Things First



Rules of Evidence - Sources

- Arizona Rules of Evidence
- Legislation
- Court Decisions



Types of Evidence

Direct

- Evidence which, if believed, resolves a matter at issue
- Ties defendant directly to crime



Types of Evidence

Circumstantial

- Facts are inferred from circumstances
 - Witness testified they saw defendant's car leave scene of shooting



Examples of Evidence

- Testimonial Evidence
- Video – store recordings / body camera
- Photographs
- Audio Evidence – 911 calls, IV recordings
- Documentary Evidence
- Clothing
- Digital Evidence
- Lab / Test results
- Weapons – guns, knives, rocks
- Drugs



Is Your Evidence Admissible?

- Defense Motions to Suppress
 - Ariz. R. Crim. P. 16.2
- State's / Defendant's Motions in Limine
- Stipulations
- State's Ethical Duties



Planning For Trial



What Evidence is Needed to Prove Your Case?

- What evidence **MUST** be admitted to prove each element of your case?
- What witness will you use to admit each piece of evidence?
- Consider demonstrative evidence.
- What objections will you need to overcome?



What Evidence is Needed to Prove Your Case?

- Inspect / review evidence with case agent (defense counsel?)
- Create exhibit / witness list
- Ensure redactions are made of video / audio / photo
- Decide what you DON'T need / consolidate



Preparing For Trial

- Prepare witnesses (including victims)
 - Review evidence before trial
 - Review recordings / transcripts before trial
 - Review photos
 - Discuss what can / cannot be said
 - Review exhibits if necessary / possible



Preparing For Trial

- Prepare Exhibits
 - Make redactions
 - Ensure ability to publish – check your technology
 - Make sure exhibits get to court – arrange for storage if necessary
 - Get exhibits to clerk to mark prior to trial



Preparing For Trial

- Consider:
 - Which witness will be used to admit each exhibit? Make a list.
 - Have case agent ready to unseal evidence w/ defense to save time
 - Group photos to save time – admit quickly

Trial – Now What?

- “The Dance”
 - May I approach the exhibits?
 - Showing defense counsel exhibit # ____
 - May I approach the witness?
 - I am handing you exhibit # ____
 - LAY PROPER FOUNDATION *
 - State moves to admit exhibit # ____ into evidence
 - State requests to publish exhibit # ____ to the jury
 - Return exhibit to clerk!

Laying Your Foundation

- WHO
- WHAT
- WHEN
- WHERE
- WHY (sometimes)

Me : let me sleep

Brain : lol no, let's stay
awake and remember
every stupid decision
you made in your life.

Me : okay



Laying Your Foundation

- Your Goal:
- Establish that the evidence is what you purport it to be. You must show:
 - Recognition
 - Identification
 - Authentication



Laying Your Foundation

- 1. Do you know what this is? (**Recognition**)
- 2. What is it? (**Identification**)
- 3. How do you know what this is? (**Authentication**)

Laying Your Foundation

If exhibit is a representation of something else, or has been altered since it was collected, you must further clarify with 4th question:

- Photo, video, diagram or other representation:
 - Is this a fair and accurate depiction of _____?
- For altered exhibit:
 - Is this _____ in the same or substantially similar condition as when you found it?



Move to Admit Your Evidence

- Anticipate objections—be prepared to respond
- It is okay to ask defense counsel what foundational element is missing (hilarity often ensues!)
- Judge may direct you to ask more questions
- This is NOT a problem!



Move to Admit Your Evidence

- Keep a record of what you have admitted
- Don't pass your witness until you are sure that all evidence listed for them is admitted
- Get your case agent to keep track if needed

Publish to the Jury

- Show the jury the evidence:
 - Place in front of them
 - Show on ELMO
 - Show on video recording
 - Play audio recording

Publish to the Jury

- Wear gloves with drugs or other physical evidence
- Witness can demo that a firearm is safe
- NEVER point weapon at anyone, even if safe
- Weapons and ammo go back to jury separately
- Show drugs, but send back photo to jury
- Maintain chain of custody and evidence security!

Return Exhibits to Clerk

- Don't keep exhibits!
- Drugs go back into LE evidence.
- Collect at end of each day and ensure you *and defense counsel* don't have any.
- Maintain chain of custody during trial
- Avoid mistrial! Review admitted exhibits at end of trial to ensure that ONLY admitted evidence goes to jury!



Common Objections

- Lack of foundation
- Chain of custody
- Prejudicial, Rule 403 (Probative value vs. prejudicial effect)
- Hearsay (judges often don't understand it)



Practical Tips

- Written stipulations
- Hash out evidentiary issues prior to trial
- Don't have to have the person that took the photo
- Don't need everyone (every link) in chain of custody
 - Goes to weight, not admissibility
- Have witnesses view / listen to recordings prior to trial
- Practice!



Questions?